

**U.S. Department of the Interior  
Bureau of Land Management**

**Decision Record  
For the  
Durkee Clay Pit Expansion**

**Environmental Assessment #DOI-BLM-OR-050-2009-039-EA**

**Baker Field Office  
P.O. Box 947  
Baker City, Oregon 97814  
September 12, 2011**

## **DECISION RECORD**

Ash Grove Cement Company Durkee Clay Pit Expansion

Environmental Assessment #DOI-BLM-OR-050-2009-039-EA

This decision record documents my decision to authorize the Ash Grove Cement Company Durkee Clay Pit Expansion as presented under the Proposed Action Alternative.

According to the best available records and field observations, no federally listed threatened or endangered (T & E) plant species currently occur within the project area, and no T & E wildlife species reside in the survey area. An audio recording of one species of bat (*Myotis sp*) was obtained during the night of June 7, 2010; however, neither bat roosting habitat nor prime foraging habitat is available within the survey area. Therefore, it is assumed that the bat was passing through the area; no consultation was required with the U.S. Fish and Wildlife Service and/or the National Oceanic and Atmospheric Administration.

The project area has been surveyed for cultural resources and no resources were identified. The Oregon State Historic Preservation Office (SHPO) has concurred with the finding of no effect and determined that no further archaeological work is needed within the project area.

### **BACKGROUND**

The Baker Field Office, Bureau of Land Management (BLM), received a Plan of Operation (PoO) from Ash Grove Cement Company to expand an existing clay mining operation at the Durkee Quarry in Baker County, Oregon in Sections 14 and 15, T. 12 S., R. 43 E., Willamette Meridian. The PoO was originally submitted on May 19, 2009, a revision was submitted on June 24, 2009.

The Ash Grove Cement Company Durkee Clay Pit Expansion Environmental Assessment (#DOI-BLM-OR-050-2009-039-EA) was prepared to disclose and analyze the environmental consequences of authorizing the project proponent's Plan of Operations to mine clay from BLM-administered public lands.

There have been no changes made to the EA that was submitted for public comment.

### **PUBLIC INVOLVEMENT**

Consultation letters, with an enclosed cultural resource inventory report, were sent on January 26, 2011 to the Oregon State Historic Preservation Office (SHPO), Confederated Tribes of the Umatilla Indian Reservation (CTUIR) and the Burns Paiute Tribe. BLM received a letter of no effect concurrence from Oregon SHPO on February 07, 2011 (SHPO Case No. 11-0203). The Burns Paiute Tribe did not provide comments or request

additional consultation. The CTUIR provided comments to the BLM, regarding the Ash Grove project, on March 9, 2011. Generally, their concerns were in regards to mercury emissions by the plant, degradation and loss of access to treaty resources, potential impacts to cultural resources, and resources needing to be addressed in the EA. BLM scheduled a face-to-face meeting with CTUIR to discuss the Ash Grove project and EA on April 11, 2011. Based on this meeting changes were made to the Ash Grove Draft EA to try and address CTUIR's concerns. BLM has not received any additional comments or meeting requests from CTUIR.

After the EA was prepared, it was available for a formal 30-day public comment period. A legal notice was placed in the Baker City Herald on August 1, 2011, requesting comments on the EA and the proposed Finding of No Significant Impact (FONSI). An announcement and the EA were also placed on the District's Internet site and letters were sent to known interested parties requesting comments. The public notice was mailed to the three grazing permittees, Baker County Commissioners, Oregon Department of Geology and Mineral Industries (DOGAMI), Oregon Department of Fish and Wildlife (ODFW), Oregon Department of Environmental Quality (DEQ), and the Confederated Tribes of the Umatilla Indian Reservation.

The BLM received no comments on the EA and FONSI.

## **Decision**

My decision is to select the Proposed Action Alternative and approve the Ash Grove Cement Company Durkee Quarry Nelson #3 Plan of Operations, for expanding an open pit clay source used in the manufacturing of cement. The existing clay pit is located on private land and Ash Grove will expand this pit (13.0 acres) onto public land managed by the BLM Baker Field Office. Ash Grove will also realign three portions of an existing road (2.24 acres) on public land the total disturbance on public lands will total 15.24 acres. The Project area is located in Section 14 and 15, Township 12 South, Range 43 East, Willamette Meridian, Baker County, Oregon.

My decision is based on the interdisciplinary analysis contained in the Environmental Analysis DOI-BLM-OR-050-2009-039-EA, field review, public comments, tribal government consultation, SHPO, ODFW, DOGAMI and other entities that have jurisdiction within the project area. Mitigation measures are identified below:

The terms and conditions (described in EA section 2.1.1 Environmental Protection Measures) approve the Ash Grove Cement Company Durkee Quarry Nelson #3 Plan of Operations, design features of the project stipulations and monitoring, as well as measures to mitigate effects, are relative to the decision and incorporated into the Plan of Operations. These are:

**Air Quality**

The following measures would be implemented by Ash Grove to protect air quality:

All applicable state and federal air quality standards would be met through the use of the best available technology to control emissions;

Application of water on roads and pads when necessary to suppress dust;

Prudent speed limits would be observed on unpaved roads throughout the project area in order to reduce fugitive dust emissions; and

Access roads, project area roads, and other traffic areas would be maintained on a regular basis to minimize fugitive dust and provide for safe travel conditions.

**Cultural Resources**

The following cultural resource protection measures would be implemented by Ash Grove:

Any cultural and/or paleontological resource (historic or prehistoric site or object, or fossil) discovered by Ash Grove, or any persons working on his behalf on public or Federal land shall be immediately reported to the authorized officer. Ash Grove shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. Ash Grove will be responsible for the cost of evaluation and mitigation, and any decision as to proper avoidance, protection or mitigation measures will be made by the authorized officer after consulting with Ash Grove and others (including affected tribes) under Section 106 of the National Historic Preservation Act.

Pursuant to 43 CFR 10.4(g), Ash Grove must immediately notify the authorized officer, by telephone, with written confirmation, immediately upon the discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, pursuant to 43 CFR 10.4(c) and (d), Ash Grove must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the authorized officer.

The BLM Authorized Officer will determine avoidance, protection or mitigation measures in consultation with Ash Grove, Oregon State Historic Preservation Office (OSHPO), and affected Tribes. Costs associated with the discovery, evaluation, protection or mitigation of the discovery shall be the responsibility of Ash Grove.

Ash Grove shall notify the Authorized Officer at least 90 days prior to any non-emergency activities that would cause surface disturbance in the project area. The Authorized Officer will determine if a cultural resource inventory, treatment or mitigation is required for the activity. Ash Grove will be responsible for the cost of inventory, avoidance, treatment or mitigation; including any maintenance-

caused damage. The Authorized Officer will determine avoidance, treatment and mitigation measures that are necessary after consulting with Ash Grove and others (including affected tribes) and under Section 106 of the National Historic Preservation Act.

### **Wildlife**

Ash Grove would implement the following measures to minimize potential impacts to wildlife in the project area:

Trash and other waste products would be properly managed and Ash Grove would control garbage that could attract wildlife. All trash would be removed from the sites and disposed of at an authorized landfill;

Speed limits would be posted, and if necessary, speeds would be reduced, especially when wildlife is active near access and service roads;

Employees and contractors are strictly prohibited from carrying firearms on the job site to discourage illegal hunting and harassment of wildlife; and

Reclamation of the disturbed areas, as described in Section 2.1.2, would be completed in order to return these areas to a productive wildlife habitat.

### **Invasive Non-Native Species**

To minimize the introduction and establishment of noxious weeds, and invasive non-native species in the disturbed areas, the following measures would be incorporated into the Proposed Action:

Ash Grove would use an all-states-certified noxious weed-free seed mix during revegetation of disturbed areas;

Ash Grove would complete concurrent reclamation when feasible in order to minimize disturbed areas where weed species could establish;

Ash Grove would revegetate growth medium and overburden stockpiles with an all states- certified weed-free seed mix as soon as possible following stockpile completion;

Vehicle traffic would be restricted to defined roads or overland travel routes to reduce potential mechanical transport of noxious weed seeds; and

When working in areas of established noxious weed populations, equipment would be washed prior to leaving the site.

### **Water Resources**

Environmental Protection Measures (EPMs) that would be implemented for the protection of groundwater and surface water resources are as follows:

Constructed road segments would be designed to minimize the cumulative volume distance quantity of displaced water and sediment; pursuant to standard engineering practices;

Road location would conform to topography and minimize disruption of natural drainage patterns;

Road design would consider operational requirements, season of use, and management activities on surrounding terrain;

Drainage features would be applicable to site conditions and minimize water concentrations and their effects on areas adjacent to the road segment;

Routine road maintenance would ensure drainage features remain functional;

Landings would be the minimum size commensurate with safety and equipment requirements. Landing locations would be located outside 100-foot buffer areas around streams and springs and would utilize previously disturbed areas where practicable;

Access across ephemeral, intermittent and perennial streams would be avoided wherever possible. Twenty-four inch diameter culverts would be used if it is necessary to cross any stream;

Avoidance of ground disturbing activities when soils become saturated to a depth of three inches;

Disturbed areas should be contoured to blend with the natural topography. Blending is defined as reducing form, line, and color contrast associated with the surface disturbance; and

Appropriate Best Management Practices, such as certified weed-free silt fences and/or straw bales (BLM I M OR-2011-019), would be used in areas requiring sediment control.

### **Public Safety, Fire Protection, and Sanitation**

EPMs that would be implemented for sanitation, fire protection, and public safety are as follows:

Ash Grove would comply with Mine Safety and Health Administration regulations;

Public access to the pit area would be limited;

Portable sanitary facilities, serviced by a local contractor, would be located on-site for use by personnel during exploration activities; and

Noise suppression devices would be used on all compressors; spark arresters would be used on all equipment that has the potential to emit sparks.

### **Reclamation**

Reclamation of the disturbed areas associated with the Proposed Action would be completed to meet the post-mine land uses for the area. Concurrent reclamation would be used to the extent possible during operations.

Reclamation of the project area would include regrading the disturbed areas to blend with the surrounding topography to the extent possible;

The final pit would be sloped to a 3H: 1V or less as the bench levels are removed. Growth medium salvaged prior to disturbance would be spread over the slopes and reseeded to stabilize the slopes as soon as possible;

Regraded areas would be seeded using a BLM-approved seed mix;

Once mining is completed and all reclamation work is done, the area would be monitored and maintained for three or more years to ensure the final reclamation meets the post-mine land use needs; and

The existing disturbance adjacent to the Proposed Action would continue to be used under the Proposed Action for continued mining and access to the additional resource clay described in the Proposed Action.

### **Alternatives Considered**

In order to address concerns raised in public and agency scoping, while fulfilling BLM's stated purpose and need for the project, BLM explored the following alternatives:

**Proposed Action** – This alternative would authorize the Plan of Operations as proposed by Ash Grove Cement Company of Overland Park, Kansas, to mine and extract clay from an existing pit on public and private lands. The expansion onto public lands would encompass 13.0 acres and require the realignment of a portion of an existing road, which would equate to 2.24 acres of additional disturbance. The clay is used in the manufacturing of cement at the Durkee Cement plant located on private lands south of Durkee, Oregon. The Proposed Action would occur within 15.24 acres of unpatented mining claims. There are no wetlands or perennial streams within the proposed action area.

**No Action** – This alternative would deny the mining Plan of Operations proposed by Ash Grove Cement Company. Only the existing land management activities would occur on BLM lands. Mining currently occurring under the terms of an Oregon Department of

Geology and Mineral Industries permit and Conditional Use Permits from Baker County would continue on adjacent private lands.

### **Decision Rationale**

The implementation of the Proposed Action best meets the Purpose and Need described in the Ash Grove Cement Company Durkee Clay Pit Expansion EA, and as required, BLM considered a No Action alternative in our analysis. The requirements of 43 CFR 3809, Surface Management Regulations, the Mining Law of 1872 (30 U.S.C. §§ 22-24, 26-28, 29-30, 33-35, 37, 39-42 and 47, May 10, 1872, as amended 1875, 1880, 1921, 1925, 1958, 1960 and 1993.), the Federal Land Policy and Management Act of 1976, and the Mining and Minerals Policy Act of 1970 mandate that BLM will review and respond to a PoO within 30 days of receipt (43 CFR 3809.411). As per §3809.411, BLM has reviewed the received PoO, determined it to be complete, responded to the proponent, and completed the environmental review required under the National Environmental Policy Act (NEPA).

The proposed action is authorized under the surface management program administered by BLM which includes mineral exploration, mining, and reclamation actions on the public lands administered by BLM. It is mandated by Section 302(b) of FLPMA (43 USC 1732[b] and 603[c]; 43 CFR 3802 and 43 CFR 3809). All operations of any nature that disturb the surface of the mining claim or site require authorization through the proper BLM field office.

The BLM regulations establish three levels of authorization, (1) casual use, (2) notice level, and (3) plans of operations. Casual use involves minor activity with hand tools, no explosives, and no mechanized earth moving equipment. No permit is required. Notice level activities involve use of explosives and/or earth moving equipment. The total exploration causing surface disturbance must not exceed 5 acres or 1000 tons of presumed ore. A plan of operations is required for all other surface disturbance activities. An environmental assessment and reclamation bonding are required.

In addition, the mineral resource management direction and implementation decision in the Baker Resource Management Plan (RMP) of July 12, 1989, will be met which directs the BLM to encourage and facilitate the development of public land mineral resources by private industry in a manner that satisfies national and local needs; and provides for economically and environmentally sound exploration, extraction, and reclamation practices (RMP p. 25). Mineral exploration and development can occur concurrently or sequentially with other resource uses. General mineral resource management objectives are:

(1) Public lands will remain open and available for mineral exploration and development, unless withdrawal or other administrative action is clearly justified in the national interest. The BLM decision is consistent with this objective.



(2) Ensure that mineral resource exploration and development does not cause unnecessary or undue degradation of the public lands.

(3) Process permits, operating plans, leases, mineral patent applications, mineral exchanges and other mineral use authorizations for public lands in a timely and efficient manner. The BLM decision is consistent with this objective.

(4) Ensure receipt of fair market value for mineral commodities unless otherwise provided for by statute. The BLM decision is consistent with this objective.

The BLM concludes that authorizing the PoO as described in the decision record and implementing the enumerated terms and conditions meant to reduce impacts and protect other resources is in the public interest and represents multiple-use balancing in the project area that will allow the project to proceed and still protect other existing resources.

The No Action alternative (Alternative 1) was not chosen because this alternative would not meet the purpose and need to provide the opportunity for the public to access public lands, which includes mineral exploration, as mandated by the Mining Law of 1872 and the Federal Land Policy and Management Act of 1976.

### **Compliance and Conformance**

This decision is in conformance with the mineral resource management direction and implementation decision in the Baker Resource Management Plan (RMP) of July 12, 1989 (pp. 25) which is to encourage and facilitate the development of public land mineral resources by private industry in a manner that satisfies national and local needs; and provides for economically and environmentally sound exploration, extraction, and reclamation practices.

This decision is in compliance with the Clean Water Act because the mining disturbance areas will be located outside wetlands and perennial streams. Furthermore, the project incorporates design features (EA Section 4.1.8) and a water/sediment management process to minimize water quality impacts and ensure there is no potential for indirect discharge of sediment.

This decision is in compliance with the National Historic Preservation Act (NHPA) as described in Section 2.1.1 of the EA. The proposed action would have no effect to any property listed on or potentially eligible for listing on the National Register of Historic Places (NRHP), because there are no known cultural or paleontological resources. Any cultural and/or paleontological resource (historic or prehistoric site or object, or fossil) discovered by the holder, or any persons working on his behalf on public or Federal land would be immediately reported to the authorized officer. The Authorized Officer would determine avoidance, treatment and mitigation measures that are necessary after consulting with the holder and under Section 106 of the NHPA.

This decision is in compliance with the Endangered Species Act because no federally listed threatened or endangered plant or animal species currently occur within the project area (EA Section 3.7.2 & 3.9.2). The proposed action would not significantly adversely affect any candidate species or their habitat due to the design features incorporated into the proposed action to minimize the potential for impacts to candidate species and their habitats.

The decision is in compliance with the Clean Air Act. The proposed action would not significantly affect air quality because no chemicals would be used in the mining of clay process and dust control measures would be used during mining operations (EA Section 2.1.1).

The project does not contain any Areas of Critical Environmental Concern, designated Wilderness, Wild & Scenic Rivers or prime and unique farmlands.

## **CONCLUSION**

The BLM recognizes that public lands are an important source of the Nation's mineral resources. The decision supports multiple use management of public lands in accordance with the Federal Land Management and Policy Act of 1976 and recognizes that mineral resource development can occur concurrently with other resource uses. The project has been analyzed, the public has been involved, and appropriate stipulations will be included in the Plan of Operations to prevent unnecessary degradation, to reduce the effects to the environment and to respond to the public's concerns.

## **APPEAL RIGHTS**

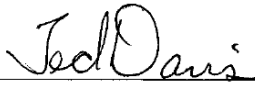
This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1. If an appeal is filed, your notice must be filed in this office (BLM, 3285 11th Street, Baker City, Oregon 97814) within 30 days from that notice of this decision is published in the Baker City Herald. The appellant has the burden of showing that the decision appealed is in error.

If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, pursuant to regulation 43 CFR § 4.21, the petition for stay must accompany your notice of appeal. A petition for stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

### **Standards for Obtaining a Stay**

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

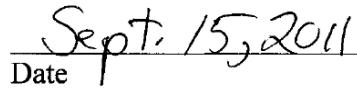
1. The relative harm to the parties if the stay is granted or denied.
2. The likelihood of the appellant's success on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted.
4. Whether or not the public interest favors granting the stay.



Ted Davis

Field Manager

Baker Field Office, Vale District BLM



Date